

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 306 of 2003****For Approval and Signature:****HONOURABLE MR.JUSTICE C.K.BUCH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?	☐
2 To be referred to the Reporter or not ?	☐
3 Whether their Lordships wish to see the fair copy of the judgment ?	☐
4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	☐
5 Whether it is to be circulated to the civil judge ?	☐
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STATE OF GUJARAT - Appellant(s)**Versus****DINESHCHANDRA RAMJILAL SHAH - Opponent(s)****Appearance :**

MR AY KOGJE, LD.APP for Appellant(s) : 1,
 MR RAJESH M AGRAWAL for Respondent (s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH**Date : 14/11/2005****ORAL JUDGMENT**

1. Heard Mr.A.Y.Kogje, ld.APP, appearing for the appellant-State and Mr.Agrawal, learned counsel appearing for the respondent-accused.
2. The petitioner-State has preferred the present

appeal assailing the order of acquittal dated 28th October, 2002 recorded by the ld.Judicial Magistrate First Class, Savali in Criminal Case No.71 of 1992 filed by the complainant-Mr.S.B. Bhatt, Food Inspector, appointed by the State of Gujarat under the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act').

3. The allegation in the complaint is that the respondent-accused has committed offence punishable under Sections 4 and 7 of the Act. The sample of 'salt' was drawn/taken from the shop of the respondent-accused and on analysis, it was found adulterated (on being not found as per the standards proclaimed) in view of the provisions of the Act. It was found that the sample of salt was not iodized and such salt was put in prohibited category for sale for human consumption. There is no factual dispute as to such prohibition on relevant date.
4. Having considered the reasons assigned by the ld.Judicial Magistrate First Class while passing the order of acquittal dated 28th October, 2002,

the Court is of the view that there is no either illegality or perversity in the finding recorded by the learned Magistrate. The learned Magistrate has appreciated oral evidence and is discussed by the learned counsel in paragraph no.11 of the order. It is not a matter of dispute that on the day i.e. on 22nd August, 1991, the sample was drawn in presence of one independent Panch and it was collected in accordance with rules framed under the Act and the same has been analysed in the laboratory in accordance with the scheme prescribed under the Rules framed under the Act. The defence of the respondent-accused before the Court was that the salt purchased from the shop though was sold at Rs.0-75 ps. per kilogram, the same was not for human consumption and, therefore, it cannot be said to be a sample of a food article.

5. Mr.A.Y. Kogje, ld.APP, has taken this Court through the evidence led by the orig. complainant but in response to the query raised by this Court, he has fairly accepted that there is no reference in the Panchnama drawn by the

complainant as to the maximum size of the crystal of the salt collected by way of sample. This query has been raised by this Court in reference to one answer given by the complainant in the cross-examination, wherein he has admitted that the type of salt which was taken by him as a sample is also used in manufacturing ice-cream, etc. This is nothing but an important indirect indication that the crystals of the salt collected must not be dust like, which is normally being used as a food article (Salt of big size crystals popularly known as "Jadu" or "Vadagru Mithun" common parlance in many parts of State of Gujarat. Though from 12th August, 2001, there was prohibition on sale of salt which is not iodized in the Vadodara District under a Notification published by the competent authority, but the salt of all types, as a matter of practice, is being sold by a trader running a grocery shop and, therefore, while dealing with such a case, the defence taken by the respondent-accused, if probalised, shall have to be considered in appropriate

perspective. The salt is being used for various purposes. Even many traditional people are using such salt even in cleaning their teeth on occasions. The aquarium holders too are putting a small quantity of salt for the better health of fishes kept in it. All such salts are being sold in the grocery shop. So the size of the crystal of the salt becomes relevant when a case is placed by the State on the strength of the ratio of the decision of the Apex Court in the case of ***Ram Lal v. State of Rajasthan, reported in AIR 2001 SC 47***, while interpreting Section 2(v) of the Act, wherein it has been held that a food article does not lose its character as food by the fact that it was also used or sold for other purposes. The article in the cited decision was not salt. So such a defence, if is found to be a lame or moonshine defence, the Court must reject such defence. But there is ample logic in the stand taken by the respondent-accused and when the complainant himself has admitted in the cross-examination that the sample of salt which was taken by him,

was of the type which is used in process of manufacturing ice cubes. So when the defence is probablized on a given set of facts, the advantage goes to the accused, is the accepted proposition of criminal jurisprudence. Any decision can be said to have been applicable in the background of facts of each case.

6. Mr.A.Y. Kogje has also drawn the attention of the Court on the observations made by the Orissa High Court in the case of ***Badrinarayan Sahu v. State of Orissa, reported in 1992 Cr.L.J. 3418,*** especially paragraph no.12 of the decision, which reads as under :-

"12. Thus it had been laid down by this Court that in a case under S.16(1) (a) of the Act, evidence of sale or storage for sale of an adulterated or prohibited article of food is not enough and the prosecution must further prove beyond doubt that such sale or storage for sale was for human consumption. In other words, emphasis has been laid on the question of human consumption. In my humble view while

rendering these decisions, the proper meanings of the words 'food' and 'sale' defined in the Act do not seem to have been kept in view. At any rate after the authoritative pronouncement by the Supreme Court in the case of Tamil Nadu v. R. Krishnamurthy the renderings in the aforesaid four Orissa decisions can no longer hold the field. On careful analysis of the relevant provisions of the Act and keeping in view the pronouncement of the apex Court, the correct legal position that emerges is that in a case under S.16(1)(a) of the Act, prosecution is merely to prove that an article of food as defined in the Act (which may or may not be meant for human consumption) which is adulterated or sale of which is prohibited under the law, was either sold or kept for sale by the accused."

7. It appears that in view of the facts of the present case, the above observations of the Orissa High Court would not help the

prosecution.

8. The second hurdle found is that the present appeal is in absence of any formal leave to appeal and such an appeal would not be maintainable in the eye of law. It is true that such a leave could have been prayed for by the appellant-State and for praying such leave appropriate application for condonation of delay could have been preferred but the appeal is filed in the month of March, 2003 and prior to that an application for condonation of delay was also moved by the appellant-State being Misc.Criminal Application No.5003 of 2003. Mr.Agrawal has drawn my attention to the scheme of sub-sections 4, 5 and 6 of Section 378 of the Indian Penal Code.
9. I am afraid whether the State now can get any formal leave to appeal after filing of the present appeal at a belated stage after expiry of six months from the date of order of acquittal. So there is no scope of success for the appellant-State in the present appeal. It is a well settled law that unless the Court finds

that the order of acquittal recorded by the lower Court is patently illegal, perverse and bad, there is scope of reversal of acquittal, only then it can be said that there is any strength in the appeal against the order of acquittal. Though Mr.Agrawal, learned counsel appearing for the respondent-accused has cited one decision of the Apex Court in support of his submission made as to the maintainability of the appeal. I do not think so necessary to discuss the same. Undisputedly, in the present case, the State has neither prayed for any formal leave to appeal nor the such prayer is granted. Merely because the State has preferred appeal instead of the orig.complainant i.e.Food Inspector, would not make the appeal maintainable in view of the scheme of Section 378 of the IPC.

10. For short, I do not find any merit in this appeal and therefore, the same is hereby dismissed. The order of acquittal dated 28th October, 2002, passed by the ld.Judicial Magistrate First Class, Savali is hereby upheld.

(C.K. Buch, J)

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